

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EVELYN STOKES,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

Civil Action No. 23-12738

Stephen J. Murphy, III
United States District Judge

David R. Grand
United States Magistrate Judge

**REPORT AND RECOMMENDATION TO DENY WITHOUT
PREJUDICE DEFENDANT’S MOTION TO DISMISS (ECF No. 7)**

Plaintiff Evelyn Stokes (“Stokes”) brings this action against her former employer, Defendant Blue Cross Blue Shield of Michigan (“Blue Cross”), alleging claims for race discrimination/harassment and retaliation under both Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* and Michigan’s Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101, *et seq.*, interference and retaliation in violation of the Family Medical Leave Act, 29 U.S.C. § 2601, *et seq.*¹, and disability discrimination/harassment and retaliation in violation of both the Americans with Disabilities Amendments Act, 42 U.S.C. § 1201, *et seq.* and Michigan’s Person’s with Disabilities Civil Rights Act, M.C.L. § 37.1101, *et seq.*²

On November 21, 2023, Blue Cross filed a motion to dismiss under Fed. R. Civ. P.

¹ Stokes mistakenly cites 29 U.S.C. § 1211.

² Pursuant to 28 U.S.C. § 636(b)(1), the case has been referred to the undersigned for all pretrial purposes. (ECF No. 3).

12(b)(1), arguing that this Court lacks subject matter jurisdiction over Stokes' claims because they involve "issues as to which an arbitration agreement has been signed." (ECF No. 7, PageID.48). Alternatively, Blue Cross asks the Court to stay the case pending the outcome of arbitration. (*Id.*, PageID.52).

The matter has gone through exhaustive briefing by both parties. (ECF Nos. 10, 11, 13, 14, 16, 17). The Court heard oral argument on May 22, 2024 (ECF No. 19), and August 27, 2024. For the detailed reasons stated on the record at both hearings, the Court **RECOMMENDS** that Blue Cross' motion to dismiss (ECF No. 7) be **DENIED WITHOUT PREJUDICE**.

Dated: August 27, 2024

s/ David R. Grand
DAVID R. GRAND
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES REGARDING OBJECTIONS

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505, 508 (6th Cir.1991); *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir.1981). The filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir.1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829

F.2d 1370, 1373 (6th Cir.1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge. A party may respond to another party's objections within 14 days after being served with a copy. *See* Fed. R. Civ. P. 72(b)(2); 28 U.S.C. §636(b)(1). Any such response should be concise, and should address specifically, and in the same order raised, each issue presented in the objections.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 27, 2024.

s/Eddrey O. Butts _____
EDDREY O. BUTTS
Case Manager